

FILED

JUN 21 2010

CLERK *JB*
United States Bankruptcy Court
San Jose, California

Benyam and Paula R. Mulugeta
1025 Harker Ave.
Palo Alto, Ca. 94301
Tel: 650-906-8012
Email bmulugeta1020@gmail.com

Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In Re:

Benyam and Paula R. Mulugeta

Case No. 09-51900 ASW
CHAPTER 11

**APPLICATION TO EMPLOY TRI
COMMERCIAL AND RODNEY
THOMPSON AND TO CANCEL THE
EMPLOYMENT OF MARCUS &
MILlichap AND DAVID J. WOLF**

Judge: The Honorable A. Weissbrodt

APPLICANTS, Benyam and Paula R. Mulugeta (jointly "Debtors"), respectfully represent to the court and request as follows:

- 1- Applicants filed its Chapter 11 Petition on March 18, 2009
- 2- On April 28, 2010 Debtors employed Marcus & Millichap and Mr. David J. Wolf, Debtors believe for the best interest of the estate and the creditors Debtors need to replace Marcus & Millichap and Mr. David J. Wolf by TRI Commercial and Mr. Rodney Thompson.
- 3- Among the assets of the Debtors' estate is property located at **353 Grand Ave. Oakland, Ca. 94610 APN 010-0767-001** A mixed use apartment complex with 21 apartments and 4 commercial units.
- 4- The Applicants believes that it is in the best interests of the estate that the Applicants employ a real estate agent to assist in the marketing and sale of the real property
- 5- Applicants have chosen Mr. Rodney Thompson, of TRI Commercial to represent the Applicants in the sale of the real property.
- 6- Filed herewith is a supporting Declaration of Mr. Rodney Thompson regarding the employment of TRI Commercial.
- 7- The general terms of the agreement between the Applicants (Debtors') and the proposed real estate firm are as follows:
 - A) The list price of the property located at 353 Grand Ave. Oakland, Ca. 94610 will be \$2,850,000.00.
 - B) The compensation sought by the proposed real estate agent is six percent (6%) of the gross sales price.
 - C) The period for the listing agreements is June 24, 2010 through December 24, 2010.
 - D) Any sale of the property and/or payment of commission are subject to approval by the United States Bankruptcy Court.
- 8- The proposed real estate agent has been informed and understands that no sale may be consummated until ample notice to all creditors, and an order from the Bankruptcy Court approved the sale obtained. Further, the proposed real estate broker understands that no commission will be paid without further order by the Bankruptcy Court.

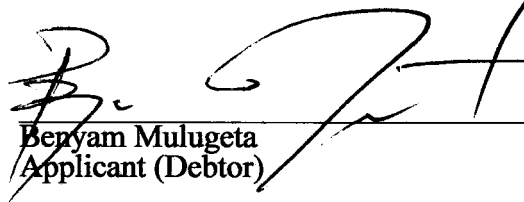
1 9- The Applicants (Debtors') are informed, believes, and therefore alleges that the
2 employment of TRI Commercial and Rodney Thompson, as the estate's real estate broker
3 on the terms and conditions provided for herein is in the best interests of the estate.

4 10- The Applicants (Debtors') are satisfied that TRI Commercial and Rodney Thompson are
5 disinterested persons within the meaning of 11 U.S.C. Section 101 (14). Neither TRI
6 Commercial nor Mr. Rodney Thompson has any connection whatsoever with the U.S.
7 Trustee or any person employed in the office of the U.S. Trustee.

8 11- TRI Commercial and Mr. Rodney Thompson are aware of the provisions of 11 U.S.C.
9 Section 328(a), and have agreed, notwithstanding the terms and conditions of
10 employment herein, set forth, that the Court may allow compensation different from the
11 compensation provided for in the terms and conditions of the employment agreement
12 between Applicants (Debtors') and TRI Commercial and Mr. Rodney Thompson.

13 **WHEREFORE**, Applicants (Debtors') prays that it be authorized to employ TRI Commercial
14 and Mr. Rodney Thompson as real estate agent on the terms and conditions set forth herein.

15 Dated: June 21, 2010

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Benyam Mulugeta
Applicant (Debtor)

Benyam and Paula R. Mulugeta
1025 Harker Ave.
Palo Alto, Ca. 94301
Tel: 650-906-8012
Email bmulugeta1020@gmail.com

Debtors in Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In Re:

Benyam and Paula R. Mulugeta

Debtors

Case No. 09-51900 ASW
CHAPTER 11

DECLARATION IN SUPPORT OF APPLICATION
TO EMPLOY REAL ESTATE BROKER

Judge: The Honorable A. Weissbrodt

I, Rodney Thompson, hereby declare as follows:

- 1- I am a licensed real estate agent with TRI Commercial. My office is located at 1404 Franklin St. Oakland, Ca. 94612. My telephone number is 510-622-8433.
- 2- I am qualified to represent the estate of the Debtors as sellers of the property located at 353 Grand Ave. Oakland, Ca. 94610 for the reasons stated herein.
- 3- The general terms of the agreement between the Debtors and TRI Commercial and I are as follows:
 - A) The list price of the property located at 353 Grand Ave. Oakland, Ca. 94610 will be \$2,850,000.00.
 - B) The compensation sought by TRI Commercial and I is six percent (6%) of the gross sales price.
 - C) The period for the listing is June ²⁴~~18~~, 2010 through December ²⁴~~18~~, 2010
 - D) Any sale of the property and/or payment of commission is subject to approval by the United States Bankruptcy Court.
- 4- TRI Commercial and I are disinterested persons within the meaning of 11U.S.C. Section 101(14) and have no connection whatsoever with the Debtors', the Debtors' creditors, the U.S. Trustee or any person employed in the office of the U.S. Trustee, the accountants for the Debtors and /or any other relative of the Debtors'. TRI Commercial and I am not now, nor have been business partners, associates, representatives or agents in the conduct of any business by the Debtors.
- 5- I have several years of experience in the selling of real property in the area where the subject property is located.
- 6- I have read the Debtors' Application, and agreed to accept said employment on the terms and conditions contained therein.
- 7- I understand that neither sale of the real property nor the payment of any commission to TRI Commercial or me may occur without an order being obtained by the United States Bankruptcy Court.

I DECLARE under the penalty of perjury that the foregoing is true and correct.

Dated: June 14, 2010


Rodney Thompson

DECLARATION IN SUPPORT OF APPLICATION TO EMPLOY REAL ESTATE BROKER- 1



EXCLUSIVE AUTHORIZATION & RIGHT TO SELL

Trans Pacific Centre
1000 Broadway, Suite 350
Oakland, CA 94607

Tel 510.622.8400
Fax 510.622.8499
www.tricommercial.com

The undersigned Owner hereby appoints TRI Commercial Real Estate Services, Inc. its sole and exclusive Agent and hereby grants said Agent the exclusive and irrevocable right to sell the property ("the Property") located at 353 Grand Ave City of Oakland, County of Alameda, State of California, which Property is improved as follows: Store/Office (mixed use) 21,114 sf

The term of this Authorization shall be for a period commencing June ⁹⁴~~14~~, 2010 and terminating at midnight on December ⁸⁴~~14~~, 2010.

The terms upon which this Property may be sold, and which Owner agrees to accept, is the sum of: Two Million Eight Hundred Fifty Thousand (\$2,850,000) Dollars lawful money of the United States of America, on the following terms: all cash or other terms acceptable to owner.

Owner also authorizes Agent to accept and hold a deposit from a prospective Buyer(s) for the Property. Any deposits retained by Owner, in case of non-performance by Buyer(s), shall be equally divided between Owner and Agent, except that Agent's portion thereof shall not exceed the compensation provided for herein.

1. In consideration of this Authorization, Agent agrees to utilize its best efforts and diligently pursue the procurement of a Buyer(s) to effectuate a sale of the Property. Owner agrees to pay Agent as compensation for services rendered a sum equal to 6 percent (6%) of the purchase price payable through escrow or otherwise at the close of the transaction when:

a. Agent procures a Buyer(s) during the term herein on the terms specified herein, or any other terms acceptable to Owner.

b. The Property is sold, exchanged, leased, or otherwise transferred during the term hereof, by Owner, or through any other source.

c. The Property is withdrawn from the sale, or if this Authorization is revoked during the term hereof, or if Owner otherwise prevents the performance hereunder by the Agent.

d. A sale, exchange, or other transfer of the Property is made within six (6) months after the termination of this Authorization to persons with whom Agent shall have negotiated or to whom the Property has been submitted during the term hereof and whose names the Agent shall have submitted in writing to Owner within twenty (20) days after termination of this Authorization.

e. If Owner elects to exchange the Property, the commission will be deemed earned on the basis of the exchange value attributed to the Property and shall otherwise be due and payable pursuant to the provisions hereof.

f. Agent shall be entitled to its commission in the event the ultimate purchaser is determined through an overbid or other bankruptcy procedure triggered by the marketing of the property during the term of this listing

2. In the event suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of his costs of suit, and not as damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover his costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to recover his costs or attorneys' fees.

3. During the term of this Authorization or any extension hereof, Owner shall refer to the Agent any and all inquiries received by Owner from any source whatsoever, including other brokers, with respect to or concerning the Property or any part thereof, together with the name and address of the person or corporation making such inquiry. Agent shall promptly investigate each such inquiry as well as other offers and inquiries received by or directed to the Agent.



EXCLUSIVE AUTHORIZATION & RIGHT TO SELL

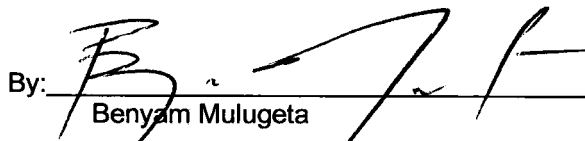
Trans Pacific Centre
1000 Broadway, Suite 350
Oakland, CA 94607

Tel 510.622.8400
Fax 510.622.8499
www.tricommercial.com

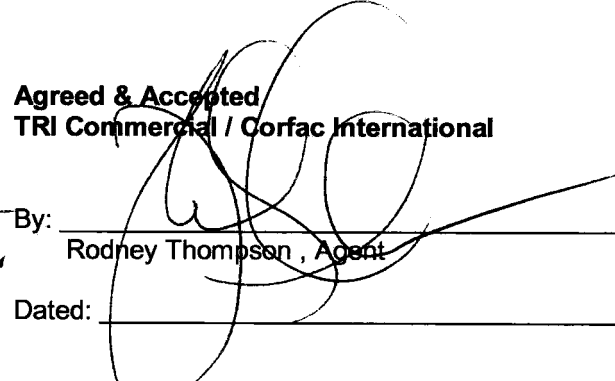
4. Agent is hereby authorized to place appropriate Real Estate signs on or adjacent to the Property and those shall be the only brokerage signs permitted by the Owner during the term of this Authorization or any extension hereof.
5. Owner agrees to pay all customary escrow, title and revenue charges and to execute such documents as may be necessary to affect the sale of the Property.
6. Owner warrants that Paula R & Benyam Mulugeta is the owner of record of the Property or has the legal authority to execute this Authorization. Owner agrees to hold Agent harmless from any liability or damages arising from any incorrect information supplied by Owner or any information which Owner fails to supply.
7. The Property is offered without regard to race, creed, color, sex, or national origin.
8. Owner acknowledges receipt of a copy of this Authorization which Owner has read and understands.

Agreed & Accepted
Owner: Paula R. Mulugeta and
Benyam Mulugeta

By: 
Paula R. Mulugeta
Dated: 6-21-10

By: 
Benyam Mulugeta
Dated: 6-21-10

Agreed & Accepted
TRI Commercial / Corfac International

By: 
Rodney Thompson, Agent

Dated: _____

Approved By: _____

Address: 1025 Harker Ave, Palo Alto CA 94612

Telephone: 650-906-8012

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DECLARATION IN SUPPORT OF APPLICATION TO EMPLOYE REAL ESATE BROKER- 2

1 Tsegereda B. Mulugeta
2 P.O. Box 407
3 Palo Alto, Ca. 94302
4 Tel; 650-575-7578

5 UNITED STATES BANKRUPTCY COURT
6 NORTHER DISTRICT OF CALIFORNIA

7 In Re:

8 Benyam and Paula R. Mulugeta) Case No. 09-51900 ASW
9) Chapter 11
10)
11 Debtors)
12)
13 -----)

14 **CERTIFICATE OF SERVICE**

15 I am a citizen of United States and residence of Santa Clara
16 County. I am over the age of eighteen years and not a party to
17 the above-entitled action, my address is 1025 Harker Ave., Palo
18 Alto, Ca. 94301.

19 On June 21, 2010, I mailed a true and correct copy of the
20 following documents.

21 **DEBTORS COUNTER TO STERLING SAVINGS BANK RESPONSE**

22 In the matter indicated below:

23 X By mail, by enclosing said document(s) in an envelop and
24 depositing the sealed envelop with the United States service
25 with the postage fully prepaid addressed as follows:

26 **See Attached Mailing List**

27 This Certificate was executed on June 21, 2010 at Palo Alto,
28 California. I declare under penalty of perjury that the
foregoing is true and correct.

Dated: June 21, 2010


Tsegereda Mulugeta

COURT SERVICE LIST
CASE NO.: 09-51900 ASW

ABBEY, WEITZENBERG, WARREN & EMERY, P.C.
RICHARD W. ABBEY, ESQ. (SBN: 053039)
RACHEL K. STEVENSON, ESQ. (SBN: 172525)
100 Stony Point Road, Ste. 200
Post Office Box 1566
Santa Rosa, California 95402-1566
Telephone No.: (707) 542-5050
Facsimile No.: (707) 542-2589 ← *M.B. VIA Facsimile also*
stevenson@abbeylaw.com

U.S. TRUSTEE

United States Trustee
U.S. Federal Building
280 S. 1st Street, #268
San Jose, CA 95113-3004

Aglaia Panos
13240 Clairepointe Way
Oakland, CA 94619

Tomoko Nakama
1569 Jackson St.
Oakland, CA 94612

Robert Taylor
541B Cowper
Palo Alto, CA 94301

First Street Commercial Mortgage Fund, LLC
c/o Eric A. Nyberg
Kornfield, Nyberg, Bendes & Kuhner
1999 Harrison St., Ste. 2675
Oakland, CA 94612